THE HON'BLE MR JUSTICE GHULAM MOHAMMED

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RIT PETITION NO : 4574 of 1994

ORDER:

This Writ petition is filed against the order dated 17-02-1994 passed by the 1st respondent confirming the penalty imposed by the disciplinary authority of removal from service as being illegal, arbitrary and quash the same and consequently direct the respondents to reinstate the petitioner into service by paying back wages, attendant benefits and continuity of service.

It is necessary to note relevant facts of the case.

The case of the petitioner is that he has been working in the respondent organization for the last 18 years and prior to his removal from service he was working as Electrician Grade-III. It is his further case that due to ill health he absented from duty from 21-08-1993 to 21-09-1993 for which he was issued with charge memo dated 04-09-1993. The petitioner submitted his explanation dated 25-09-1993, admitting the charges of unauthorized absence and requested to condone his lapse. However, not satisfied with the explanation, enquiry was ordered and accordingly enquiry report dated 26-10-1993 was submitted to the disciplinary authority. By proceeding dated 10-12-1993, the disciplinary authority having considered the explanation offered by the petitioner, enquiry report, imposed a penalty of removal from service for his unauthorized absence to duty. As against the penalty imposed by the disciplinary authority, the petitioner preferred appeal dated 14-12-1993 to the 1st respondent. The 1st respondent by the impugned order confirmed the punishment imposed by the disciplinary authority. Aggrieved by the same, this writ petition is filed.

Learned counsel for the petitioner strenuously contended that the punishment imposed is grossly disproportionate to the charges levelled against the petitioner. Learned counsel further contends that inasmuch as the petitioner has accepted the charges leveled against him, the respondents ought to have

imposed a lesser punishment to that of imposing a capital punishment of removal from service. Learned counsel lastly contends that impugned order is bereft of reasons. In support of his contentions, he relied on decision in the case of ***UNION OF INDIA v. GIRIRAJ SHARMA[1].***

On the other hand, learned Counsel for the respondents contends that the petitioner has committed various acts of misconduct during the service and on earlier occasions he was warned, censured for eight times and in spite of the same the petitioner did not mend his ways and absenting to duty frequently and it is under those circumstances the respondents were constrained to pass the impugned order. In support of his contention, learned counsel relied on the Apex Court's decisions in ***APPAREL EAXPORT PROMOTION COUNSEL v. A.K.CHOPRA***[2], and ***UNION OF INDIA v. E.G.NAMBUDIRI***[3].

The only reason assigned by the respondents in imposing the major punishment of removal from service on the petitioner is that he is an habitual absentee and in spite of warnings given to him on earlier occasions he could not mend himself. It is true that due to the conduct of the petitioner in absenting himself frequently without intimation and prior sanction of leave would certainly cause inconvenience to the work of the organization. But the petitioner on almost all the occasions had been admitting the charges and has been stating that due to his ill-health, he absented himself from his duties. The sum and substance of the complaint against the petitioner is that he is a habitual absentee. The Apex Court in Giriraj Sharma's case (1 supra) had an occasion to deal with a case of imposing a punishment of dismissal for overstaying leave period. At penaltium portion of the 2 paragraph of the judgment, it was held thus:

> *"The incumbent while admitting the fact that he had over-stayed the period of leave had explained the circumstances in which it was inevitable for him to continue on leave as he was forced to do so on account of unexpected circumstances. We are of the opinion that the punishment of dismissal for over-staying the period of 12 days in the said circumstances which have not been controvered in the counter is harsh since the circumstances show that it was not his intention to wilfully flout the order, but the circumstances forced him to do so. In that view of the matter the learned counsel for the respondent has fairly conceded that it was open to the authorities to visit him with a minor penalty. If they so*

desired, but a major penalty of dismissal from service was not called for."

The case relied on by the learned counsel for the respondents in A.K.Chopra's case (2nd supra) pertains to a misconduct touching moral turpitude i.e. sexual harassment at work place of female employees and under those circumstances, the Apex Court held that such cases are to be dealt with great sensitivity and any sympathy or mercy towards the offender would be misplaced and was of the view that the punishment of removal from service commensurate with the acts of the misconduct.

But in the instant case, what all the charge levelled against the petitioner is that he is a habitual absentee. No doubt for his callous conduct and attitude he should visit with some lesser punishment but certainly not with a punishment of removal from service.

In the facts and circumstances of the case, the impugned order dated 17-02-1994 passed by the 1st respondent is hereby set aside. The 1st respondent is directed to consider the case of the petitioner for re-appointment by demoting him by two grades and pass appropriate orders within a period of six weeks from the date of receipt of a copy of this order. It is made clear that the petitioner would not be entitled for any back wages, except to continuity of service and other attendant benefits.

In the result, the Writ Petition is allowed with the above observation. No costs.

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NRG/KVR 1st July, 2004

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this the Thursday the 1st day of July two thousand and four.

ASSISTANT REGISTRAR

1st July, 2004.

// True Copy //

Section Officer

To

1. Visakhapatnam Port Trust,

Rep. by its Chairman,

Visakhapatnam.

2. Chief Mechanical Engineer,

Visakhapatnam Port Trust,

Visakhapatnam.

3. Two C.D.Copies